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5 Hon. Ronald B. Leighton

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON AT TACOMA

8 JULIE BALLOU,

9 Plaintiff,

10 vs.

11 JAMES McELVAIN, P.H.D., in his  
12 individual and representative capacity; and  
CITY OF VANCOUVER, a municipal  
corporation,

13 Defendants.

No. 3:19-cv-05002-RBL

ORDER GRANTING STIPULATED  
MOTION TO SET TRIAL DATE AND  
STAY CASE PENDING  
INTERLOCUTORY APPEAL

14 The parties, by and through undersigned counsel, stipulate as follows:

15 1. On April 17, 2020, the Court entered an order denying qualified immunity to  
16 Defendant James McElvain on Plaintiff's allegations under the First and Fourteenth  
17 Amendment. (Dkt. 67.)

18 2. The Court of Appeals has jurisdiction to review on interlocutory appeal all legal  
19 issues tied to a district court's denial of qualified immunity. *Mitchell v. Forsyth*, 472 U.S. 511,  
20 526 (1985); *accord Plumhoff v. Rickard*, 572 U.S. 765, 771-73 (2014).

21 3. Defendant McElvain has filed a notice of appeal. (Dkt. 73.) This divests the  
22 district court to proceed to trial on issues that will be considered by the Ninth Circuit. *City of*  
*23 Los Angeles v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001); *Chuman v. Wright*,  
24 960 F.2d 104, 105 (9th Cir. 1992).

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ORDER - 1  
(W.D. Wash. Cause No. 3:19-cv-05002-RBL)

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4. The parties have already stipulated, and the Court has agreed, to vacate all pretrial deadlines. (Dkt. 72.) The parties now agree that this matter should be STAYED until the conclusion of the appeal. However, the parties recognize that this matter will proceed to trial regardless of how the Ninth Circuit decides the appeal, and as such ask the Court to set a trial date after September 1, 2021, with the understanding that the date should be continued if the appeal is not fully resolved within 60 days of the trial date. The parties will email their dates of unavailability, if any, to the Court's Courtroom Deputy.

## ORDER

IT IS SO ORDERED.

DATED on June 2, 2020.

Ronald B. Leighton

Ronald B. Leighton  
United States District Judge